

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

KENNETH STONITSCH,	:	
	:	
Plaintiff,	:	NO. 1:09-CV-00593
	:	
v.	:	
	:	<b>OPINION AND ORDER</b>
COMMISSIONER OF SOCIAL	:	
SECURITY,	:	
	:	
Defendant.	:	

This matter is before the Court on Plaintiff's Motion for Fees and Costs under the Equal Access to Justice Act, 28 U.S.C. Section 2412(d) (doc. 21). The government filed no Response. For the reasons indicated herein, the Court GRANTS Plaintiff's Motion.

**I. Background**

On November 5, 2010, the Court affirmed the Magistrate Judge's Report and Recommendation, which concluded that the Administrative Law Judge ("ALJ") of the Social Security Administration failed to adequately explain his reasons for rejecting the opinion of Dr. Fritzhand, the examining physician (doc 19). The Court therefore reversed the Commissioner's non-disability finding and remanded this matter for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g) (Id.). Plaintiff now brings the present motion, as a prevailing party, seeking attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d) (doc. 21). The burden on the government as to Plaintiff's motion is to establish that its

position in these proceedings was "substantially justified."

## II. Analysis

The EAJA states in relevant part:

Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses. . . incurred by that party in any civil action. . . including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(A). The Supreme Court's decision, Secretary v. Schaefer, 509 U.S. 292 (1993), makes it clear that a claimant who obtains a sentence-four judgment reversing a denial of benefits for further consideration qualifies as a "prevailing party" and thus may petition for EAJA fees. 509 U.S. at 307 ("the Court's holding today [is] that a claimant who secures nothing more than an order instructing the Secretary to try again is a prevailing party")(J. Stevens)(concurring).

Plaintiff seeks attorney fees and costs on the basis that he became a prevailing party and because the position of the United States in this litigation was not substantially justified (doc. 21, citing Secretary v. Schaefer, 509 U.S. 292 (1993)). Plaintiff's counsel attached an itemized report of the time spent and costs expended on this matter (Id.).

Having reviewed this matter, and noting no opposition on the part of the government, the Court finds appropriate an award of

EAJA fees. The government failed to meet its burden of proof to show its position in this matter was substantially justified. 28 U.S.C. § 2412(d)(1)(A).

Since the Court finds the award of attorney's fees appropriate in this case, the Court must now determine the amount due. An acceptable procedure in calculating such fees is the lodestar method, under which the Court is to determine "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." Hensley v. Eckhart, 461 U.S. 424, 433 (1983). Plaintiff's Motion reports that his counsel spent 15.25 hours representing Plaintiff. The Court has reviewed this report and finds the number of hours expended reasonable. Plaintiff requests that the hourly rate applied in this matter equate to the rate set by Congress, \$125.00 per hour, adjusted by cost of living increases, for a total rate of \$170.00 per hour (doc. 21). The Court finds such hourly rate reasonable. The Court further finds Plaintiff's request for an award of \$350.00 for the court filing fee reasonable.

### **III. Conclusion**

Having reviewed this matter, the Court finds reasonable Plaintiff's Motion for Fees and Costs totaling \$2,942.50. Plaintiff's Motion is unopposed, detailed and offers persuasive facts and precedent as to the legitimacy of the fees sought. As such, Plaintiff's Motion is well-taken.

Accordingly, the Court GRANTS Plaintiff's Motion for Fees Under the Equal Access to Justice Act, 28 U.S.C. §2412(d),(doc. 21), and AWARDS Plaintiff \$2,942.50 for fees and costs, to be credited against any attorney fee Plaintiff may owe his Counsel.

SO ORDERED.

Dated: March 17, 2011      /s/ S. Arthur Spiegel  
S. Arthur Spiegel  
United States Senior District Judge